



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

NOV 20 2003

Marc Elias, Esq.  
Perkins Coie, LLP  
607 14<sup>th</sup> Street NW  
Washington D.C. 20005

RE: MUR 5158

Dear Mr. Elias:

On November 29, 2000, the Federal Election Commission notified your clients, Robb for Senate and Thomas J. Lehner, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on November 4, 2003, found that there is reason to believe that Robb for Senate and Thomas J. Lehner, as treasurer, violated 2 U.S.C. §§ 441b and 434(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Marc Elias, Esq.

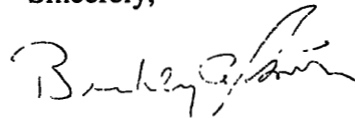
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kathleen Dutt, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bradley A. Smith", written in a cursive style.

Bradley A. Smith  
Vice Chairman,

Enclosure

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FACTUAL AND LEGAL ANALYSIS**

Respondents:

Robb for Senate and Thomas J. Lehner,  
as treasurer

MUR: 5158

1 **I. INTRODUCTION**

2 The complaint alleges that Handgun Control, Inc., now the Brady Campaign to Prevent Gun  
3 Violence ("the Brady Campaign"), and the Handgun Control Voter Education Fund, now the Brady  
4 Voter Education Fund ("the Brady Committee"), made prohibited, unreported, in-kind contributions  
5 to the campaigns of several federal candidates, including Senate candidate Charles Robb, during the  
6 1999-2000 election cycle in violation of the Federal Election Campaign Act of 1971, as amended  
7 ("the Act").<sup>1</sup> These alleged prohibited contributions resulted from television advertisements, press  
8 conferences, and websites that purportedly were sponsored by the Brady respondents.

9 The Robb for Senate Committee responded to the complaint, denying any coordination with  
10 the Brady respondents and requesting that the complaint be dismissed. This response, as well as the  
11 applicable law, will be discussed in the following sections, which analyze the specific allegations  
12 made in the complaint.

13 **II. BACKGROUND**

14 The Brady Campaign is a 501(c)(4) non-profit corporation chaired by Sarah Brady. Her  
15 husband, James Brady, is on the board of the Brady Campaign's self-described "sister

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<sup>1</sup> All of the facts relevant to these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA

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organization,” the Brady Center to Prevent Gun Violence (“Brady Center”), a 501(c)(3) non-profit organization which is not a respondent in this matter. The website for the Brady Campaign and the Brady Center sets out the following “Vision and Mission Statement”:

As the largest national, non-partisan, grassroots organization leading the fight to prevent gun violence, the Brady Campaign and the Brady Center are dedicated to creating an America free from gun violence, where all Americans are safe at home, at school, at work, and in their communities. The Brady Campaign and the Brady Center believe that a safer America can be achieved without banning all guns.

The Brady Campaign works to enact and enforce sensible gun laws, regulations and public policies through grassroots activism, electing pro-gun control public officials and increasing public awareness of gun violence.

The Brady Center works to reform the gun industry and educate the public about gun violence through litigation and grassroots mobilization, and works to enact and enforce sensible regulations to reduce gun violence including regulations governing the gun industry.

[www.bradiycampaign.org/about/mission.asp](http://www.bradiycampaign.org/about/mission.asp) (emphasis added).

The Brady Committee is a separate segregated fund connected to the Brady Campaign. In its Statement of Organization, the Brady Committee describes the Brady Campaign as a membership organization. During the 1999-2000 election cycle, the Brady Committee reported over three million dollars of combined receipts and disbursements. Included among its disbursements are over one million dollars for independent expenditures, a number of which were made in connection with U.S. Senate campaigns in Florida, Virginia, and Missouri.

### III. THE VIRGINIA SENATE RACE

The complaint alleges that the Brady Campaign made prohibited corporate expenditures by attending a September 12, 2000, press conference with Virginia Senate candidate Charles Robb to endorse him. The complaint also alleges that expenditures related to the press conference were not reported to the Commission. According to press releases by both the Robb Committee and the Brady Campaign, Jim and Sarah Brady attended the press conference with Senator Robb. (Complaint Exhibits 39-40). The Robb Committee states, in its response to the complaint, that the

1 Robb Committee "sponsored and publicized" the press conference attended by the Bradys, but that  
2 the complainant fails to present any violation of the Act.

3 The Commission examined the complaint's allegation that expenditures related to the press  
4 conference were not reported. The Brady Committee's and the Robb Committee's disclosure  
5 reports and found no itemized disbursements that appear related to the press conference. However,  
6 the Robb press conference occurred in Arlington, Virginia, near the offices of the Brady Campaign.  
7 Moreover, the Robb Committee's response to the complaint states that the press conference  
8 occurred at a county courthouse, which was available for use by the public without cost. Thus,  
9 there may not have been any travel or facility charges related to the Robb press conference.

10 According to the press release issued by the Brady Campaign, Jim and Sarah Brady  
11 endorsed Robb on behalf of the Brady Committee. (Complaint Exhibit 40). Nonetheless, as the  
12 connected organization, the Brady Campaign necessarily was involved in a press conference co-  
13 sponsored by its separate segregated fund. See 11 C.F.R. § 114.5(d) (allowing membership  
14 organizations to exercise control over their separate segregated funds). This press conference is  
15 analogous to MUR 4116 (NCSC). In that matter, which also involved a press conference  
16 endorsement of Charles Robb, the Commission found reason to believe that NCSC, a nonprofit  
17 corporation, violated the Act even though its separate segregated fund reported expenditures in  
18 connection with the press conference.

19 Furthermore, because Mrs. Brady appears to have attended the conference in her capacity as  
20 director of the Brady Campaign, a portion of her salary should have been reported as an in-kind  
21 contribution.<sup>2</sup> See 2 U.S.C. § 434(b) and 11 C.F.R. § 104.13. As a result, the Robb Committee may  
22 have received and failed to report the contribution from the Brady Campaign. Therefore, the

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<sup>2</sup> According to the Brady Campaign's 1999 tax statement, Sarah Brady worked 50+ hours per week and was paid \$155,900 per year, half of which was paid for by the Brady Center. (Complaint Exhibit 1).

1 Commission finds reason to believe that the Robb Committee violated 2 U.S.C. §§ 441b and 434(b)  
2 in connection with the press conference.

3 The Commission did not make reason to believe findings in connection with any other  
4 allegations contained in the complaint.

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